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THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

FINITO SERVICES, LLC dba SUNSPOT ) NO. 11-cv-243-RAJ  
INNS, RESORTS & VACATION )  
RENTALS, ) ANSWER, AFFIRMATIVE DEFENSES  
Plaintiff, ) AND COUNTERCLAIMS  
vs. )  
CHELAN QUALITY VACATION )  
PROPERTIES, LLC; LEWIS CLARK, )  
individually; and MARIBETH CLARK, )  
individually, )  
Defendants. )

TO: THE CLERK OF THE ABOVE-ENTITLED COURT

AND TO: DAVID A. LOWE and LAWRENCE D. GRAHAM, Attorneys for  
Plaintiff

**ANSWER**

Defendants, by and through their counsel of record, by way of Answer to the

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COUNTERCLAIMS

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1 Plaintiff's Complaint, hereby admit, deny and allege as follows:

2  
3 1. Defendants are without knowledge sufficient to form a belief as to the  
4 truth or falsity of said paragraph of Plaintiff's Complaint, and therefore deny the same.

5 2. Admit.

6  
7 3. Admit.

8 4. Admit.

9  
10 5. Admit.

11 6. Deny.

12  
13 7. Defendants are without knowledge sufficient to form a belief as to the  
14 truth or falsity of said paragraph of Plaintiff's Complaint, and therefore deny the same.

15 8. Defendants are without knowledge sufficient to form a belief as to the  
16 truth or falsity of said paragraph of Plaintiff's Complaint, and therefore deny the same.

17 9. Deny.

18 10. Deny.

19  
20  
21 11. By way of answer to paragraph 11 of Plaintiff's Complaint, the  
22 Defendants admit only that to the extent there ever were any photographs on the  
23 Defendants' website that were taken by others, those photographs were removed from  
24  
25

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1 the website long ago.

2 12. N/A.

3 13. Deny.

4 14. Deny.

5 15. Deny.

6 16. Deny.

7 17. Deny.

8 18. Defendants further deny that Plaintiff is entitled to any of the relief  
9 requested in paragraphs 1 through 6 of the Prayer for Relief set forth in Plaintiff's  
10 Complaint.  
11

## 12 **AFFIRMATIVE DEFENSES**

13 1. Plaintiff's claim should fail to the extent venue is not properly in this  
14 Court.  
15

16 2. Plaintiff's claim should fail to the extent it has itself been guilty of  
17 inequitable and wrongful conduct as set forth in the Counterclaim below.  
18

## 19 **COUNTERCLAIMS**

20 1. Plaintiff/Counterclaim Defendant Finito Services, LLC ("Finito") is a  
21

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1 Washington limited liability company doing business in Chelan County, Washington.

2           2. Defendant/Counterclaim Plaintiff Chelan Quality Vacation Properties,  
3 LLC (“CVP”) is a Washington limited liability company doing business in Chelan  
4 County, Washington.  
5

6           3. The “Echo Lodge” is a vacation rental property located in Chelan County,  
7 Washington.  
8

9           4. Finito has in the past contracted with the owners of the Echo Lodge to be  
10 the exclusive vacation rental property management firm for the Echo Lodge, however  
11 such relationship terminated in 2009.  
12

13           5. By March 2010 the owners of the Echo Lodge had contracted with CVP  
14 to be the exclusive vacation rental property management firm for the Echo Lodge.  
15

16           6. Despite having been terminated as the rental manager of the Echo Lodge  
17 in 2009, Finito has wrongfully and deceptively continued to include the Echo Lodge as  
18 among the properties listed on Finito’s website.  
19

20           7. Finito has likewise continued to list on its website one or more other  
21 properties for which Finito is no longer the exclusive vacation rental property  
22 management firm, and for which CVP is now the exclusive vacation rental property  
23

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1 management firm.

2  
3 8. By continuing to list those properties on its website despite having been  
4 terminated as the rental manager, Finito is seeking to obtain and in fact has obtained an  
5 unfair advantage over its competitor, CVP.  
6

7 9. On information and belief, CVP alleges that by listing properties on the  
8 Finito website that are now managed by CVP, Finito has caused CVP to incur actual  
9 damages and lost profits due to Finito's unfair and deceptive conduct.  
10

11 **FIRST CAUSE OF ACTION: TORTIOUS INTERFERENCE**  
12

13 10. CVP has a valid business expectancy in its relationship with its customers  
14 and prospective customers.  
15

16 11. Finito has had knowledge of that expectancy at all times material to this  
17 lawsuit.  
18

19 12. Finito's conduct as alleged herein constitutes an intentional interference  
20 inducing or causing a breach or termination of the relationship or expectancy.  
21

22 13. Finito interfered for an improper purpose and/or used improper means  
23 with respect to such interference.  
24

25 14. CVP has suffered damages as a result of Finito's conduct.  
26

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15. Finito's conduct constitutes tortious interference with a business expectancy, in that Finito has included properties now managed by CVP among the properties listed on Finito's website so that customers who are interested in renting a property managed by CVP will instead be diverted by means of this "bait and switch" into renting properties managed by Finito.

## SECOND CAUSE OF ACTION: CONSUMER PROTECTION ACT

16. Finito's conduct also constitutes an unfair method of competition and an unfair act or practice in trade or commerce that has caused damages to CVP in violation of Washington's Consumer Protection Act, RCW 19.86.

### THIRD CAUSE OF ACTION: FALSE ADVERTISING – LANHAM ACT

17. By the actions and representations previously described herein, Finito made false or misleading descriptions or representations of fact in commercial advertising or promotion that misrepresented the nature, characteristics or qualities of its goods and services.

18. These actions and representations occurred in interstate commerce.

19. Finito's actions and representations previously described herein were made in violation of the Lanham Act's False Advertising provision,

1 15 U.S.C. 1125(a)(1)(B).

2  
3 20. As a result of the foregoing misconduct, CVP has been damaged and  
4 Finito has been unjustly enriched in an amount in excess of \$75,000, the exact amount  
5 to be determined at trial.  
6

7 21. Finito's misconduct is causing irreparable injury to CVP for which there  
8 is no adequate remedy at law.  
9

10 **PRAYER FOR RELIEF**

11 For all of these reasons, the Defendants request the following relief:  
12

13 1. That judgment be entered in favor of the Defendants and against the  
14 Plaintiff with respect to all claims raised in Plaintiff's Complaint.  
15

16 2. That the Defendants be awarded judgment with respect to all claims  
17 raised in the Defendants' Counterclaim.  
18

19 3. That the Defendants recover their reasonable attorney fees and costs  
20 incurred in connection with this lawsuit.  
21

22 4. That the Court award such other and further relief as is just and equitable  
23 under the circumstances.  
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1 DATED this 15<sup>th</sup> day of March, 2011.

2  
3 s/BRIAN C. HUBER  
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5 Attorney for Defendants  
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**CERTIFICATE OF SERVICE**

I hereby certify that on March 15<sup>th</sup> 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System. Notice of this filing will be sent to the parties listed below by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

David A. Lowe [lowe@blacklaw.com](mailto:lowe@blacklaw.com)

Lawrence D. Graham [graham@blacklaw.com](mailto:graham@blacklaw.com)

DATED at Wenatchee, Washington this 15<sup>th</sup> day of March, 2011.

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